

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DONNA JUSTICE)	
)	
COMPLAINANT)	
)	
v.)	CASE NO. 98-307
)	
KENTUCKY UTILITIES COMPANY)	
)	
DEFENDANT)	

ORDER TO SATISFY OR ANSWER

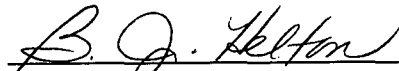
Kentucky Utilities Company ("KU") is hereby notified that it has been named as defendant in a formal complaint filed on May 27, 1998, a copy of which is attached hereto.

Pursuant to 807 KAR 5:001, Section 12, KU is HEREBY ORDERED to satisfy the matters complained of or file a written answer to the complaint within 10 days from the date of service of this Order.

Should documents of any kind be filed with the Commission in the course of this proceeding, the documents shall also be served on all parties of record.

Done at Frankfort, Kentucky, this 11th day of June, 1998.

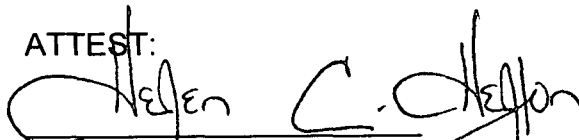
PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

98-01496

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

Donna Justice
(Your Full Name)

COMPLAINANT

VS.

Kentucky Utilities
(Name of Utility)

DEFENDANT

CASE:
98-307

RECEIVED

MAY 27 1998

PUBLIC SERVICE
COMMISSION

COMPLAINT

The complaint of Donna Justice respectfully shows:
(Your Full Name)

(a) Donna Justice
(Your Full Name)

308 E. Sixth Street Maysville, Kentucky, 41056
(Your Address)

(b) Kentucky Utilities Co.
(Name of Utility)

215 Wall Street P.O. Box 430 Maysville, Kentucky, 41056
(Address of Utility)

(c) That: Section 278.260 (1) gives as the basis of a complaint " any service that in connection therewith is unsafe...

As long time residents of Sixth Street (Maysville), we have become increasingly concerned with the safety of residents of this street due to the placement of several of Kentucky Utility electric poles. This placement restricts the passable width of the street and has caused the City to pave over existing sidewalks

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on the South side of the street to work around these poles, thereby leaving no sidewalks or other pedestrian access.

There are many children and elderly living here. It is unquestionably dangerous for them - or anyone - to walk anywhere along this section of Sixth Street! Nor can waste disposal, ambulance, or fire fighting equipment traverse Sixth Street without endangering pedestrians _ especially these children and the elderly.

We specifically request the re-positing of four poles to a more northerly location away from the pavement. This request has been presented in writing and in person to the City of Maysville and has been the brought before Council. They referring the matter first to your jurisdiction.

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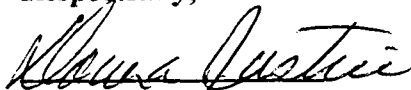
Formal Complaint

Donna Justice VS Kentucky Utilities

Wherefore, complainant asks That K-U move the poles in question, at their expense. Homeowners then can replace sidewalks and improvement can be made to eliminate all hazard conditions. Driving and walking. This problem can be solved and everyone has agreed it can be done with the re-placement of the utility poles in the proper place.

Date at Maysville, Kentucky, this 26th day of may, 1998.

Respectfully,


Donna Justice

Dan Justice

Royse, Zweigart, Kirk & Brammer

215 Court Street
Maysville, Kentucky 41056
(606) 564-4012
Fax: (606) 564-9855

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 564-6627

To: Michelle Jackson-Rigg
Of: Attorney at Law
From: Steven R. Zweigart
Client/Matter: Utility Line Relocation Memorandum
Date: February 9, 1998

DOCUMENTS	NUMBER OF PAGES*
Letter dated 11 December 1997 from City Attorney to Mayor re. Relocation of Utility Lines within Street Rights-of-way	2

COMMENTS:

Original will NOT follow.

*At long last, here is the infamous and elusive memo! I hope this may be of some help to you.
Call if you have questions or need further information.*

*Thanks,
Steve*

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• NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT (606) 564-4012.



CITY OF MAYSVILLE
3RD & BRIDGE STREET - MUNICIPAL BUILDING
(506) 564-9411 - FAX (506) 564-9415
MAYSVILLE, KENTUCKY 41056

ROBERT ZWEIGART
City Attorney
M. SUSAN BRADNER
Assistant City Attorney
215 Court Street
Maysville, Kentucky 41056
(506) 564-4012 - FAX (506) 564-0855

11 December 1997

Hon. James R. Litton
City of Maysville
216 Bridge Street
Maysville, Kentucky 41056

RE: Relocation of Utility Lines Within Street Right-of-Way

Dear Rick

At the November 13 meeting of City Commission, we were asked to research the relocation of utility lines within street right-of-way, with particular regard to Kentucky Utility poles and lines within the Sixth Street right-of-way north of the street pavement.

Kentucky Utilities Company has long had a franchise to erect poles and lines for electric transmission within the City and by virtue of such franchise has had the right to place poles and lines within street rights-of-way. The general rule is that it is within the municipal police power to designate on what parts of streets such utility facilities may be erected, and to require their relocation so long as the relocation is required for a valid public purpose.

KRS 96.060 (2) provides that cities shall reserve the right to regulate and control pipes and wires of gas, water, telephone, and electric light or power utilities, and the right to require any such utility to conform to any changed grades of the streets and public grounds, to raise or lower its pipes, or to take down its wires and lay them underground, as the public good requires.

As stated in *Commonwealth v. Louisville Water Company*, 479 S.W. 2d 626 (Ky. 1972), a utility company must relocate its facilities in the public streets when changes are required by public necessity or convenience, and the risk of loss occasioned by such changes is on the utility.

Though not relevant to this situation, it is of interest that KRS 177.035, adopted in 1972, requires the Commonwealth to pay the cost of reconstructing or relocating fire plugs, pipes, mains, conduits, cables, wires, towers, poles, and other municipal-owned utility equipment or appliances when necessary for highway improvements financed at least in part by United States government funds.

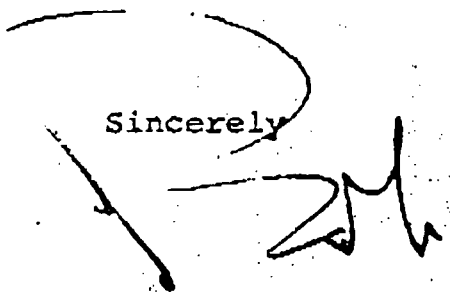
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R Z K & B ATTY

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PAGE 04

Hon. James R. Litton
11 December 1997
Page Two

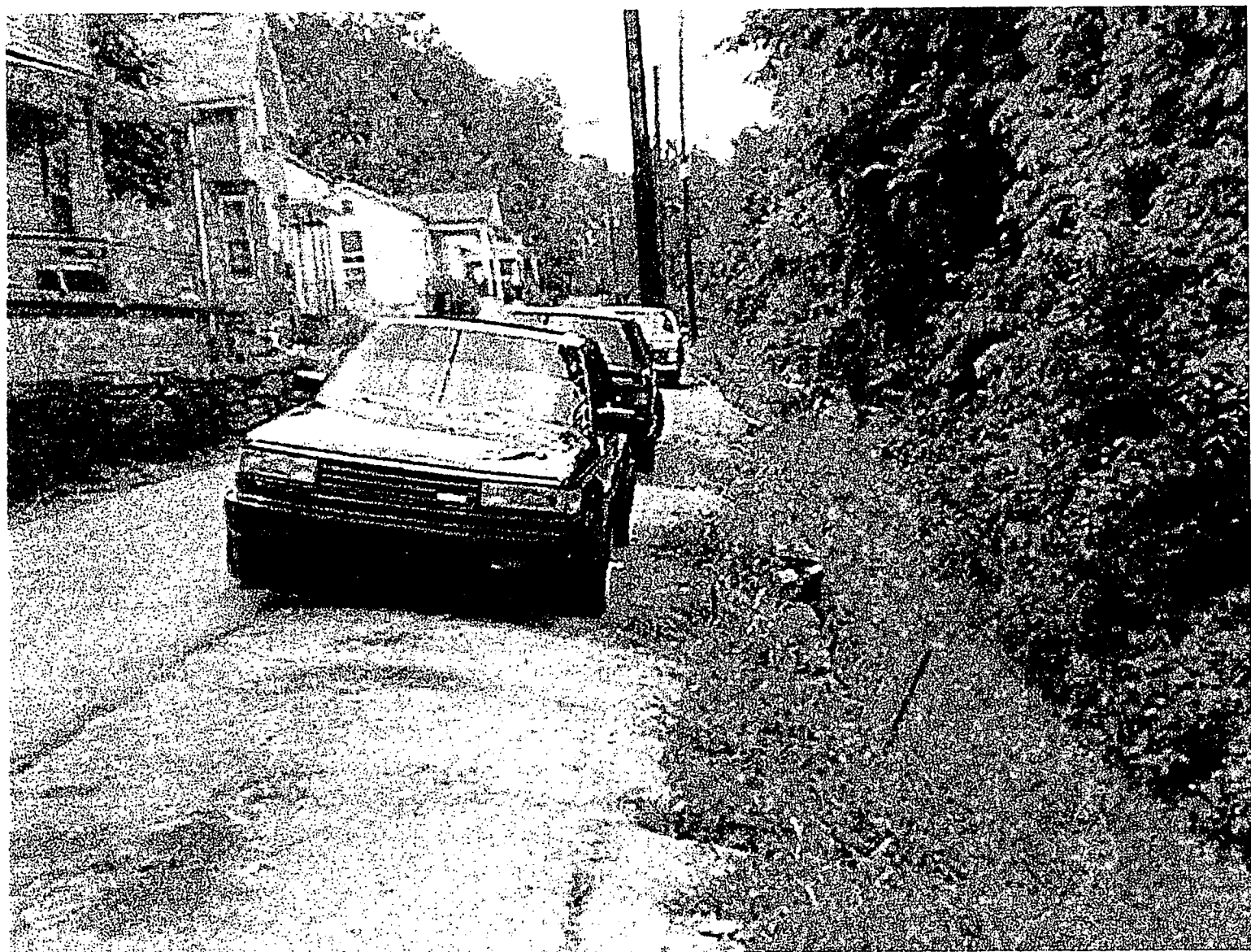
Sincerely

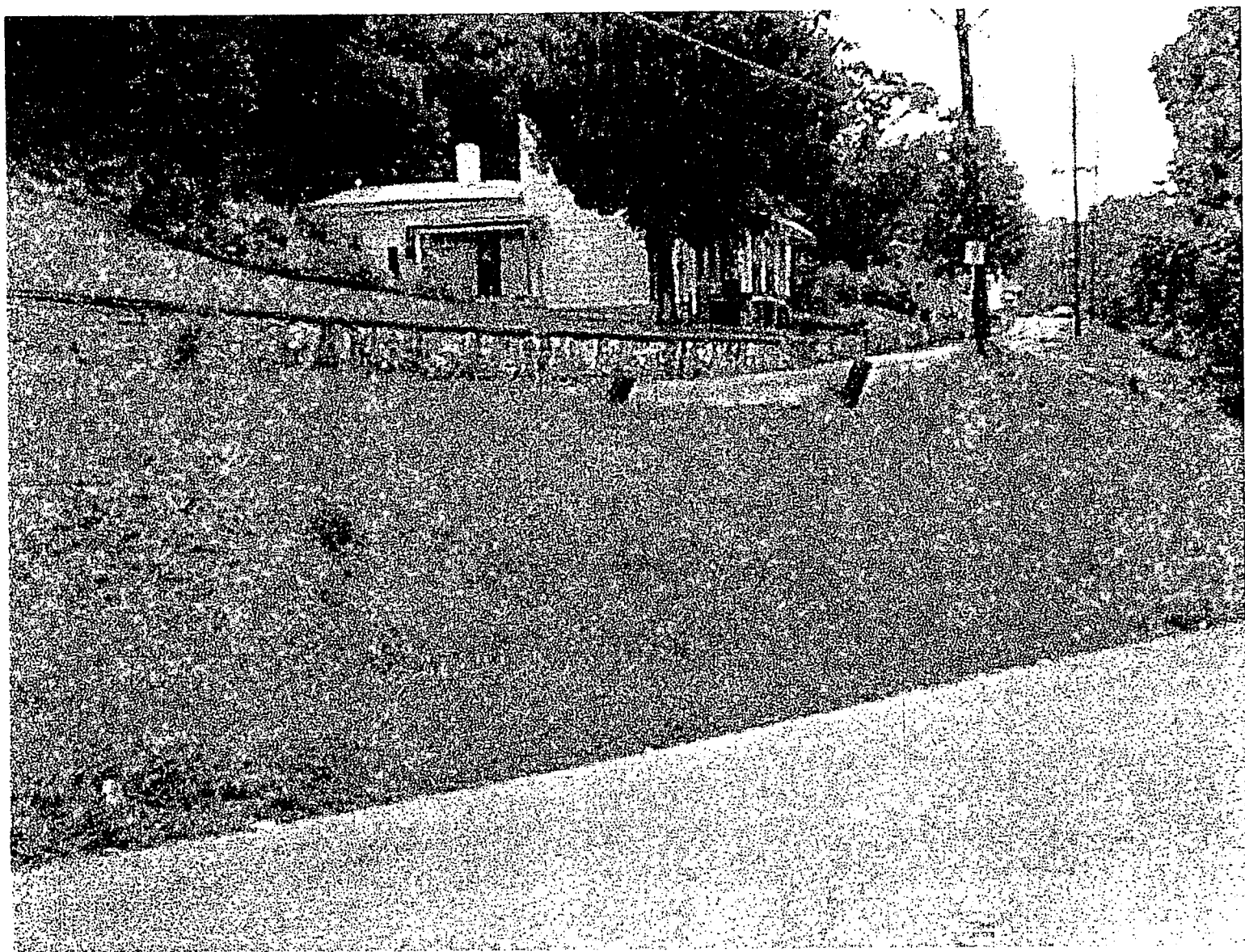


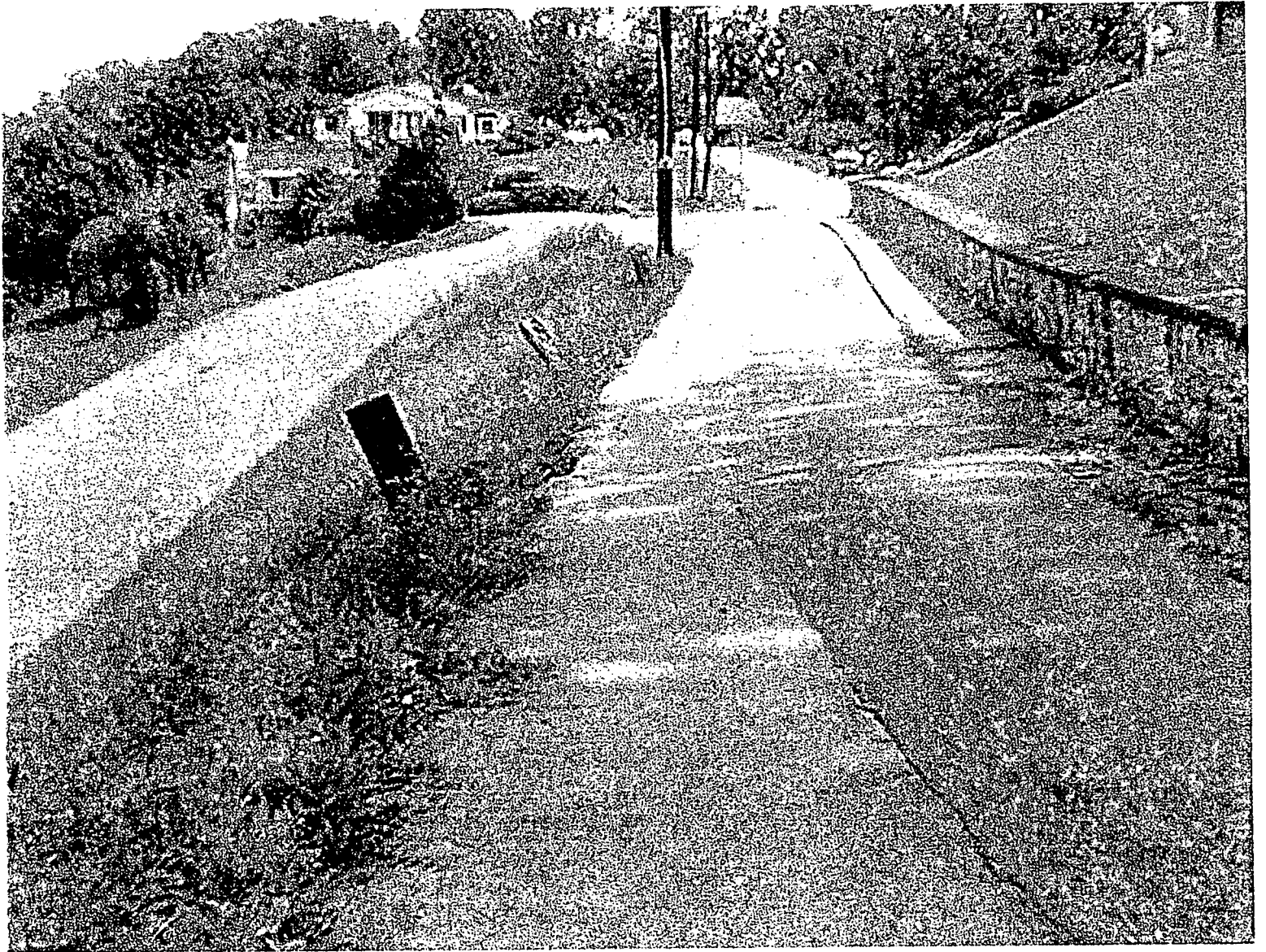
Robert G. Zweigart

sgm

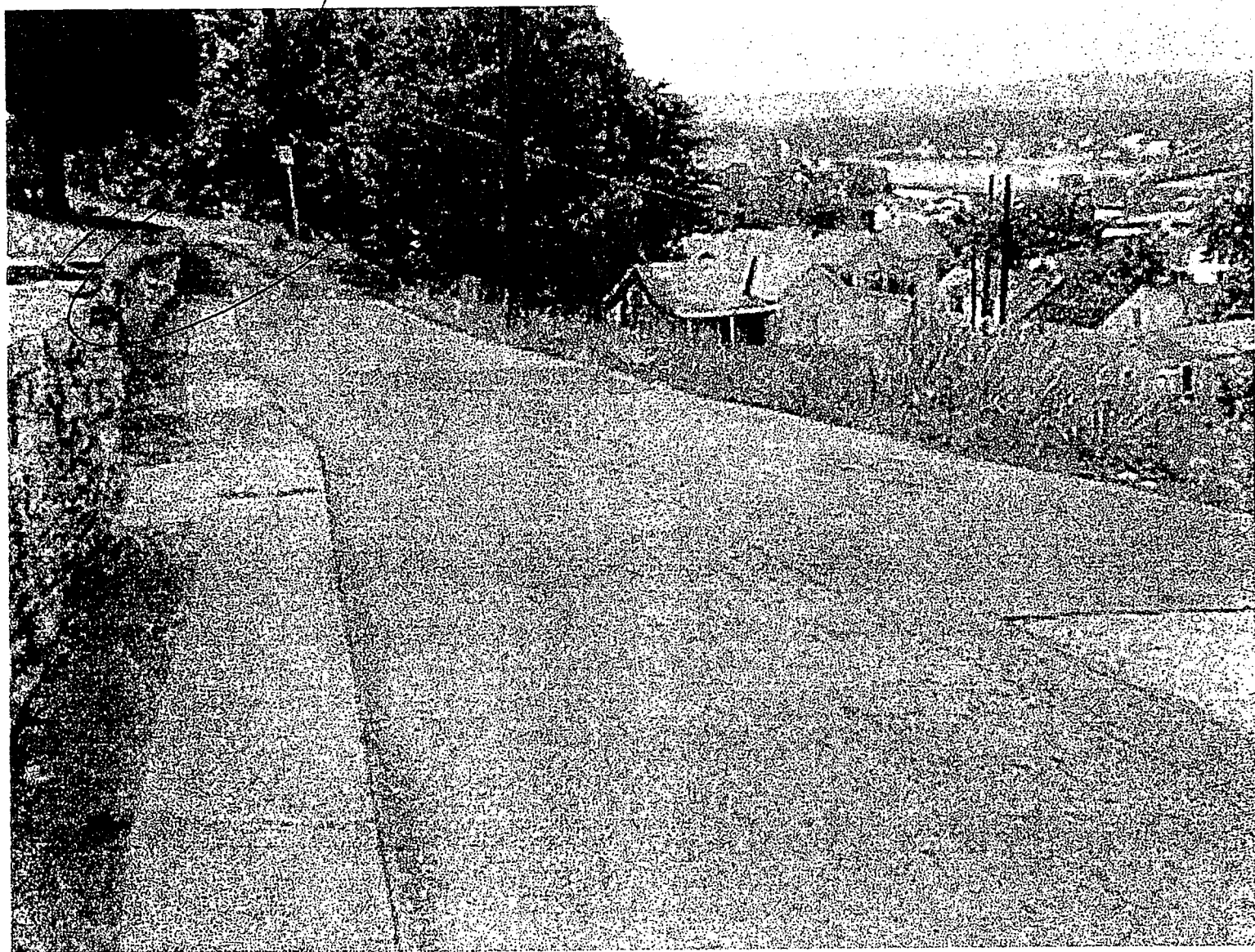
XC: Dennis Redmond

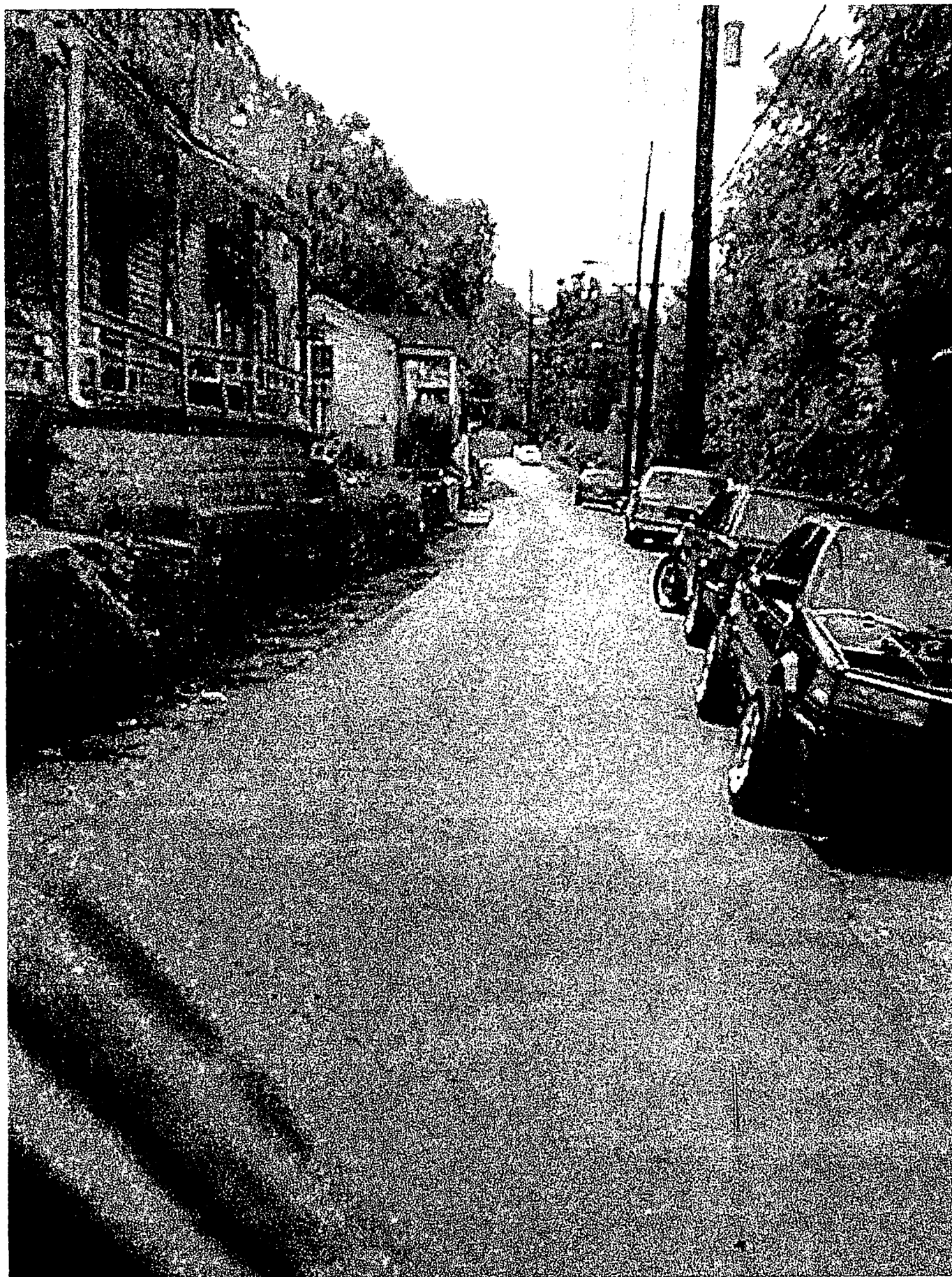






NO SIDEWALKS





Michelle Jackson-Rigg

ATTORNEY AT LAW
PHILLIPS' FOLLY
227 SUTTON STREET
P.O. BOX 549
MAYSVILLE, KENTUCKY 41056
606 564-6801
FAX 606 564-6627



PHILLIPS' FOLLY

March 17, 1998

City of Maysville
Mayor and Commissioners
City Municipal Building
3rd & Bridge Street
Maysville, Kentucky 41056

RE: SIXTH STREET, MAYSVILLE, KY

Dear Sirs:

Enclosed you will find a petition which represents the position of the residents of Sixth Street, Maysville, Mason County, Kentucky.

As you are aware, we appeared in front of the commission concerning the removal of the Kentucky Utility Company poles and repairs to the street. A recent memo that was copied to us would indicate that our position; that if there was a safety concern and a public policy issue, the Kentucky Utility Company would be responsible for the cost of relocating the poles. The enclosed petition reflects what the residents of that street feel are (1) the unsafe conditions and (2) the public policy issue.

Please advise if there is a time and date that we might be able to set down with the commission and review this petition and the memo and form a plan of action in regard to Sixth Street.

Sincerely,

Michelle Jackson-Rigg
MICHELLE JACKSON-RIGG

MJR/adr

Enclosure

PETITION

Be it hereby reaffirmed and resolved the undersigned represent the residents and neighbors of that area in Maysville, Mason County, Kentucky fronting on and adjoining that section of the City of Maysville known as Sixth Street.

Further, the undersigned feel that the conditions presently existing on Sixth Street, Maysville, Mason County, Kentucky represent a hazardous and unsafe condition for residents, pedestrians and motorists who travel on or about Sixth Street. Said hazardous and unsafe conditions creates a problem of public safety existing in part because of the narrowness of the road, the poor condition of the road and the Kentucky Utilities Company utility poles which are actually set in the road itself.

Further, the undersigned are committed to following through and seeing that Sixth Street is widened, the utility poles are removed or relocated so that the roadway can be widened in order to resolve the public safety hazard and also permit the pedestrians to travel the sidewalk without fear of parked or moving vehicles.

In addition, four (4) public stairways extend from Fifth Street to Sixth Street which need to be repaired or replaced. One set of wooden steps are inherently dangerous and become extremely slippery when wet and present a safety hazard. Handrails and concrete steps need to be repaired or replaced.

So signed by the following on or about the months of February and/or March, 1998.

<u>Gonzine A. Ridd</u>	<u>Titia Thomas</u>
<u>Corelyn Thomas</u>	<u>Jackson Bennett Jr. & Paul Bennett</u>
<u>Russell Thomas</u>	<u>Wayne H. Harris</u>

Jack Snakes	James Betty Mc Lee
Greg Snakes	Paige & Robert Cranberry
Bill Green	Alma Gustin
Paul Bennett	George L. Orr
Robert Bennett	
William White	
James White	
Lang T. White	
Tina White	
Willie White Jr.	
Debbie Platt	
Roger D. Ritchie	
Robert Perry	
Frederick F. Lumb	
Robert Alexander	
Frederick G. Lumb	
Nor Justice	
Maria J. Berry	

To the City Of Maysville :
Rick Litton, Mayor

CC to the following:
Bill Boggs, City Commissioner
John Mains, City Commissioner
Jerry Schumacher, City Commissioner
Ken Roberson, City Commissioner
Dennis Redmond, City Manager

Kentucky Utilities Co.
One Quality Street,
Lexington, KY 40507

Re: Utility Poles Sixth Street

Dear Sirs:

This letter is to address the removal and relocation of certain utility poles on Sixth Street in Maysville, KY. The City of Maysville has a 65 foot right of way in this area. The road pavement varies in width from eight to ten feet. In some places, Kentucky Utilities has placed the utility poles within one foot of the pavement edge. The placement of these poles interferes with traffic safety as well as preventing necessary public improvements.

The Commission is well aware of the fact that the poles have been in place a long time. However, the doctrine of adverse possession does not run against a city or municipality. Further, "the right of the City to control its streets makes a party occupying the streets of a city a tenant at will of the city." City of Louisville vs. Louisville Scrap Material Company, Inc., 932 S.W.2d 352 (KY 1996).

A review of the records of the Mason County Clerk's Office is attached hereto. As the letter shows there are no easements of record for Kentucky Utilities. At this time the city must exercise its rights as against a tenant at will and require the removal and relocations of the utility poles and lines in order to make necessary road and sidewalk improvements for the public safety and welfare. The poles should be relocated in order to permit the new construction of sidewalks at a width of three feet, a paved roadway at a width of ten feet, and a gravel berm of one foot.

Sincerely,

Rick Litton, Mayor

John L. Mains, City Commissioner

William Boggs, City Commissioner

Jerry Schumacher, City Commissioner

Kenneth Roberson, City Commissioner

August 13, 1997

City of Maysville
216 Bridge St.
Maysville, Ky. 41056

Re: Improvements and maintenance of Sixth St.

Dear Mayor and City Commissioners:

The property owners of Sixth St. are very unhappy about the status of their street.

It needs major road improvements. The present location of the utility poles obstruct the road improvements that are needed. It is our understanding that the city manager and the city engineer said that there will be improvements, but that it is not their main priority. They have stated that the total to be done will be paving. This is unacceptable to the property owners of Sixth St.

This city has a 65' right of way. They have allowed Kentucky Utilities to place the poles 1' from the pavement. In some places the city has paved our sidewalks in order to have enough room for one car to drive on.

Also there is, four individual step right of way that are in such bad condition that you cannot walk on them .It is a disgrace for our city. This does pose a liability problem for the city due to poor maintenance of a public walkway.

We inquired with Buffalo Trace Area Development about the possibilities of the city getting a grant for all the improvements that are badly needed on Sixth St.. They told us that the Istea Grant could be used for this type of improvement. After talking with Dennis Redmond and Sam Baker they told us that the idea had been vetoed. We would like a written explanation for this veto as taxpayers. And what priorities are considered more urgent.

It should be a top priority, first and foremost, because of the overall liability problem. It is almost impossible for a fire truck or life squad to get through in some places on the street. We should try to resolve this obvious issue

before something tragic happens and lawyers address these issues.
putting our city in a bad position.

We would like for Mr. Litton, Mr. Boggs, Mr. Maines, Mr. Roberson and Mr Schumacher to please look at this problem and come to a supportive decision.

We have been neglected for so long that if we continue to be neglected in our concerns we will be forced to bring this to the attention of the media and Kentucky State Departments concerned with such issues. We also intend to contact our District Representative and State Congressman. We will ask for their intervention on our behalf.

If we do not hear from you within (30) working days from this meeting date of 8/14/97 we will take appropriate response. Mentioned Above.

Sincerely,

LAW OFFICES
FOX, WOOD & WOOD
TRANS FINANCIAL BANK BUILDING
334 WEST SECOND STREET
MAYSVILLE, KENTUCKY 41056

ANDREW V. FOX (1905-1977)
DONALD L. WOOD
WOODSON T. WOOD
JOHN F. ESTILL*
ANDREW W. WOOD
KATHRYN B. HENDRICKSON

*ALSO ADMITTED TO PRACTICE
IN OHIO AND WEST VIRGINIA

Received
MAY 27 1998

TELEPHONE 606-564-5585
FAX 606-564-6734

OF COUNSEL
KATHERINE L. WOOD

September 11, 1997

Donna Justice
308 East Sixth Street
Maysville, Kentucky 41056

Dear Mrs. Justice:

Pursuant to your request, I have examined the deed records of the Mason County Court Clerk's Office in order to determine the existence or non-existence of utility easements to Kentucky Utilities Company on specific properties located on East Sixth Street in Maysville, Kentucky. The properties I have checked and the results of my search are as follows:


1. 110 East Sixth Street - George W. Jones
Records checked to June 27, 1946 - no easement of record.
2. 118 East Sixth Street - Jackson Bennett and Carol Bennett
Records checked to April 7, 1953 - no easement of record.
3. 120 East Sixth Street - Russell Thomas and Evelyn Thomas
Records checked to 1929 - no easement of record.
4. 130 East Sixth Street - Robert A. Grandison and Joyce Grandison
Records checked to December 4, 1952 - no easement of record.
5. 216 East Sixth Street - Donald R. Justice, Jr. and Donna Justice
Records checked to 1906 - no easement of record.
6. 226-230 East Sixth Street - Robert Alexander and Fredrika Davis Alexander
Records checked to April 9, 1936 - no easement of record.

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7. 232 East Sixth Street - Donald R. Justice, Sr. and Donna Snapp Justice
Records checked to July 11, 1930 - easements as follows:
 - a. Clearance Permit to Kentucky Utilities Company recorded April 23, 1941 in Deed Book 138, page 524.
 - b. Electric Transmission Line Easement to Kentucky Utilities Company recorded July 20, 1972 in Deed Book 187, page 521.
8. 308 East Sixth Street - Donna R. Justice
Records checked to May 12, 1947 - no easement of record.

If you desire any further information, or should you require the deed records to be checked back to dates prior to those listed, please contact me.

Yours truly,


Katherine L. Wood

KLW:pb